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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/730,244

12/08/2003

Stephen C. Tulley

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EXAMINER

LEIVA, FRANK M

ART UNIT

PAPER NUMBER

3714

MAIL DATE

DELIVERY MODE

08/14/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/730,244

Applicant(s)

TULLEY ET AL.

Examiner

Frank M. Leiva

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 45-67 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 45-67 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 45, 46, 48-64, 66, 67 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

3. All of the claims generally recite method steps including the following

"...receiving a request to purchase a lottery ticket..." and "...determining a price associated with a lottery ticket..." Applicant's method claims do not state that the invention outputs any information, such as the price, in printed form to a person or a display. None of the method steps allows Applicant's invention to be considered tangible and not merely an abstract idea. For example, many of the claims state the limitation of "determining a price" but what happens after the price is determined, is it printed out, displayed, etc. Under 35 U.S.C. 101 the claimed invention as a whole must accomplish a practical application. That is, it must produce a "useful, concrete and tangible result." *State Street*, 149 F.3d at 1373, 47 USPQ2d at 1601-02. The purpose of this requirement is to limit patent protection to inventions that possess a certain level of "real world" value, as opposed to subject matter that represents nothing more than an idea or concept, or is simply a starting point for future investigation or research (*Brenner v. Manson*, 383 U.S. 519, 528-36, 148 USPQ 689, 693-96); *In re Ziegler*, 992, F.2d 1197, 1200-03, 26 USPQ2d 1600, 1603-06 (Fed. Cir. 1993). A process that consists solely of the manipulation of an abstract idea is not concrete or tangible. See *In re Warmerdam*, 33 F.3d 1354, 1360, 31 USPQ2d 1754, 1759 (Fed. Cir. 1994). See also *Schrader*, 22 F.3d at 295, and 30 USPQ2d at 1459.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 45-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scanlon, (U.S. 4,922,522) herein after Scanlon, in view of Cuban Lottery August 1st 1959, herein after Cuban Lottery.

Scanlon teaches:

6. Regarding claims 45-50, 52, 59-61, and 66, Scanlon teaches a method of facilitating a lottery ticket, receiving a request from an operator, the operator able to choose the number of occurrences and a price for such a transaction in accordance to the purchase, In column 2:57-63 Scanlon expresses a costumers ability to arrange a purchase, select the numbers and the quantity of times to play (occurrences), and the billing (pricing) of such a purchase in accordance to the characteristics of the purchase, say numbers and occurrences.

7. Regarding claims 48, 51, 57, 58, 63, 64, and 67, Scanlon teaches the exclusive combination of the ticket for the occurrence. In column 5:18-33 Scanlon talks about a method to avoid duplicating tickets, and if so indicating the number of duplicates in existence. In column 5:53-55, Scanlon teaches preventing the sell of duplicate tickets.

8. Regarding claims 55-56, 65, and 66 Scanlon teaches, a ticket identifier and the transmission and printing of the ticket information to a terminal. (Col 5:55-65).

9. Regarding claim 62 Scanlon teaches, using a random set of symbols. (Col 4:21-24).

Scanlon fails to teach:

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10. Regarding claims 45, and 51-54, Scanlon fails to teach the limitation of the number of duplicate tickets.

Cuban Lottery discloses:

11. Regarding claim 45, and 51-54, Cuban Lottery discloses the indication and agreement with the costumer at the time of purchase of the limits on the number of duplicate tickets sold for that drawing, and the price associated with the transaction, in pages 1 & 2 of the reference, there is an associated price of 25¢ retail per ticket, and a total of 100 tickets per number selection, yielding 1/100 of the winnings to the bearer.

Motivation:

12. It would have been obvious for one skilled in the art at the time of the invention to incorporate the teachings from the Cuban Lottery in Scanlon to limit the number of duplicate tickets so that the wining prize is guaranteed to be of a minimum amount and maintain costumer satisfaction, this combination would yield a predictable result.

Response to Arguments

13. Applicant's arguments filed 06/04/2007 have been fully considered but they are not persuasive.

14. In regards to arguments for 35 U.S.C 101 rejections, the applicant fails to disclose a tangible result. The examiner fails to see were the applicant creates something other than an imaginary idea. 35 U.S.C. 101 rejections for claims 45-64, 66, and 67 stand rejected. Furthermore as the applicant points out, that determining prices are useful because they can be relied upon by a customer, only if a customer has access to that data, as in the applicant's example, "and store the output in a separate file for processing data regarding aggregate year-end income, expenses, and capital gain loss for portfolio", the examiner points out that in the applicants example, there is indication of a report stored to be used by another entity (a report generator year-end form), making it useful. The examiner deems rejection proper.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frank M. Leiva whose telephone number is (571) 272-2460. The examiner can normally be reached on M-Th 8:30am - 5:pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

FML

08/06/2007

Robert E Pezzuto
Supervisory Patent Examiner
Art Unit 3714



XUAN M. THAI
SUPERVISORY PATENT EXAMINER

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